

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALFREDO GONZALEZ,

Plaintiff,

v.

No. 2:23-cv-00114-DHU-JHR

CHRISTINA K., et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER
DENYING MOTION TO RECONSIDER AND REOPEN**

Plaintiff, who is proceeding *pro se*, filed his Complaint using the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983." *See* Doc. 1, filed February 7, 2023 ("*Gonzalez I*"). United States Magistrate Judge Jerry H. Ritter notified Plaintiff that many of the allegation in the Complaint are in Spanish and ordered Plaintiff to file an amended complaint in English. *See* Doc. 5, filed April 3, 2023 (notifying Plaintiff that failure to timely file an amended complaint may result in dismissal of this case). After Plaintiff did not file an amended complaint by the April 24, 2023, deadline, the undersigned dismissed this case without prejudice. *See* Doc. 6, filed May 9, 2023.

On June 20, 2023, Plaintiff filed a second case. *See* Doc. 1, filed in *Gonzalez v. Kasperski*, No. 2:23-cv-00526-WJ-GJF ("*Gonzalez II*"). United States Magistrate Judge Gregory J. Fouratt notified Plaintiff that the original Complaint failed to allege facts that support the Court's jurisdiction and ordered Plaintiff to file an amended complaint. *See* Doc. 3, filed June 26, 2023, in *Gonzalez II*. Plaintiff filed his amended complaint on July 14, 2023. *See* Doc. 4, filed in *Gonzalez II*. Chief United States District Judge William P. Johnson dismissed *Gonzalez II* without

prejudice because the amended complaint did not allege facts supporting jurisdiction. *See* Doc. 6, filed July 24, 2023, in *Gonzalez II*.

Plaintiff now asks the Court to reconsider its dismissal of *Gonzalez I* and to reopen *Gonzalez I* stating:

I'm writing you today on account of a case that I tried opening with your court already twice this year that both times has been closed and gotten dismissed on account of my missing a time limit . . . I ask that you please reconsider that decision because I[']ve been trying to the best of my ability to keep up with the paperwork, I check my mail on a daily basis and I never rec[ei]ved the letters that the court claims were sent to me.

Motion to Reconsider/Reopen at 1-2, Doc. 9, filed October 26, 2023.

"A case may be reopened under Rule 60(b) for a variety of reasons." *Brewer v. City of Overland Park Police Dept.*, 24 Fed.Appx. 977, 978 (10th Cir. 2002). Rule 60(b) provides:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). “A Rule_60(b) motion for relief from judgment is an extraordinary remedy and may be granted only in exceptional circumstances.” *Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1191–92 (10th Cir. 2018).

The Court denies Plaintiff’s Motion to Reconsider/Reopen because Plaintiff has not shown that there are exceptional circumstances warranting relief from the Court’s judgment in this case. The Court dismissed this case without prejudice which allowed Plaintiff to file another action. Plaintiff filed a second action, *Gonzalez II*, which the Court dismissed without prejudice for lack of jurisdiction, not because Plaintiff missed a deadline to file a document. Plaintiff has indicated that *Gonzalez II* is the same case as *Gonzalez I*. See Motion to Reconsider/Reopen at 1 (stating “I’m writing you today on account of a case that I tried opening with your court already twice this year”); Supplement at 1, Doc. 9-1, filed October 26, 2023 (referencing 2:23-cv-00114- DHU-JHR [*Gonzalez I*] and 2:23-cv-00526 WJ-GJF [*Gonzalez II*]). Although the Court dismissed *Gonzalez I* because Plaintiff did not timely file an amended complaint, allegedly because Plaintiff did not receive the Court’s Order to file an amended complaint, the Court considered Plaintiff’s claims in *Gonzalez II*.

Plaintiff also states:

I sent in a money order for this case for \$407 and I don[']t have the rec[ei]pt anymore but I do have a confirmation I rec[ei]ved from the court with verification that the certified envelope I sent it in through the mail was rec[ei]ved, but now I was told that for both cases I was approved to have the fee waived – so I ask, where did that money go?

Motion to Reconsider/Reopen at 2. The Court granted Plaintiff’s Application to Proceed in District Court Without Prepayment of Fees or Costs in this case. See Doc. 5, filed April 3, 2023. The Court denied Plaintiff’s Application to Proceed in District Court Without Prepayment of Fees or Costs in *Gonzalez II* as moot when it dismissed *Gonzalez II*. See Doc. 6, filed July 24, 2023, in

Gonzalez II. The Court cannot waive the filing fee; the Court can only allow an action to proceed without *prepayment* of the filing fee. *See* 28 U.S.C. § 1915(a)(1) (“any court of the United States may authorize the commencement . . . of any suit, action or proceeding . . . without *prepayment* of fees”) (emphasis added).

IT IS ORDERED that Plaintiff’s Motion to Reconsider/Reopen, Doc. 9, filed October 26, 2023, is **DENIED**.

A handwritten signature in black ink, appearing to read 'David Herrera Urias', is written above a horizontal line.

HON. DAVID HERRERA URIAS
UNITED STATES DISTRICT JUDGE